

# **WISHA REGIONAL DIRECTIVE**

WISHA Services

Department of Labor and Industries

## **5.07 Workplace Violence Prevention in Health Care**

**Date: June 4, 2001**

### **I. Background**

In 1999, the Legislature passed Substitute Senate Bill 5312, subsequently codified as Chapter 49.19 RCW. The law requires “health care settings” to develop and implement plans “to reasonably protect employees from violence.”

“Health care settings” include hospitals (see RCW 70.41.020); home health, hospice, and home care agencies (see Chapter 70.127 RCW); evaluation and treatment facilities (see RCW 71.24.025(8)); and community mental health programs (see RCW 71.24.025(8)). The definition does not include nursing homes or other long-term residential care facilities. The original legislation also excluded state mental health hospitals because specific funding was not provided. However, in 2000, the Legislature passed Substitute House bill 2899, which incorporated similar requirements into Chapter 72.23 RCW.

Under Chapter 49.19 RCW, health care settings must have a plan in place and begin keeping records of violent acts by July 1, 2000, with training provided to affected employees by July 1, 2001. The new Chapter 72.23 RCW requires state mental hospitals to begin keeping records by July 1, 2000, have a plan in effect by January 1, 2001, and provide training to affected employees by July 1, 2001. Both laws specifically provide that failure to comply will subject the employer to citation under Chapter 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA).

Because the laws provide sufficient guidance as to the requirements, the Department of Labor and Industries (L&I) has not engaged in additional rulemaking to implement these statutes. Rather, this policy provides guidance on the appropriate application of existing standards in light of the requirements found in the statutes themselves.

### **II. Scope and Application**

This WISHA Regional Directive (WRD) applies to all WISHA enforcement and consultation activities involving workplace violence in health care settings. It replaces all previous guidance, whether formal or informal, and will remain in effect indefinitely.

### III. Interpretive Guidance

*A. How does Chapter 49.19 RCW apply to programs co-located with a covered setting, such as a nursing home located adjacent to and administered by a hospital?*

The requirements of the law apply to the health care settings covered by the bill. If a non-covered operation can be distinguished from the health care setting, it is not covered by the requirements of the statute (although health care employers may choose to apply the statute's guidance more broadly on a voluntary basis).

*B. Are there any requirements that must be followed by nursing homes and other health care employers not covered by Chapter 49.19 RCW?*

Yes. Although there are no specific requirements such as those found in the statute, the general WISHA requirements may apply to workplace violence hazards (see WRD 5.05 for additional guidance).

*C. Must all employees at a health care setting receive the same level of training?*

No. Affected employees must receive training appropriate to their duties and the risks they face. In addition, not all employees may be "affected employees." The plan required under RCW 49.19.020 must provide sufficient guidance to determine which employees must be trained, and what type of training they must receive.

*D. Are specific recordkeeping approaches required?*

No. As long as the required information is recorded and accessible, the records may be in any format (for example, they could be a separate database, or they could be an expanded version of the employer's OSHA 200 log).

*E. Will employers be cited for records that do not go back five years?*

No. The statute requires records to be kept for at least five years. However, that applies only to the records required by the statute, and no health care setting was required by the act to keep records earlier than July 1, 2000. If an employer keeps appropriate records at the time of the inspection, the employer will not normally be cited for an earlier failure to do so (and never for a failure to keep records that ended more than six months before the inspection). If an employer fails to retain records previously kept, however, the employer is in violation and can be cited.

### IV. Special Enforcement and Consultation Protocols

*A. How should workplace violence prevention plan violations be cited?*

Violations of the requirements of RCW 49.19.020 to have a plan (or violations of the parallel requirement by state mental hospitals) should be cited as a failure to tailor the Accident Prevention Program (APP) to the workplace under WAC 296-24-040 (WAC 296-800-14005 beginning September 1, 2001). Failure to include one or more required elements of the plan also should be cited as a failure to tailor the APP. In either case, the applicable statute should be referenced as part of the violation text.

Prior to January 1, 2002, such violations should be classified as general. After that, they should be cited serious if a related serious violation or serious hazard is specifically documented. Otherwise, they should be cited general.

*B. How should a failure to enforce the plan when a plan is in place be cited?*

If the employer has a workplace violence prevention plan in place but does not implement or enforce it (aside from training and recordkeeping issues), the violation should be cited under WAC 296-24-020(1)(b) as a failure to enforce the APP (WAC 296-800-14025 beginning September 1, 2001).

Between July 1, 2001 and January 1, 2002, such violations should be classified as general. After January 1, 2002, they should be cited serious if a related serious hazard has been specifically documented. Otherwise, they should be cited general.

*C. How should a failure to keep the required records be cited?*

Failure to keep the required records can be viewed as either a failure to develop a complete plan (as defined by the statute) or a failure to implement the APP. If the written plan does not address recordkeeping *and* records are not kept, the employer should be cited for a violation of WAC 296-24-040, with a reference to the statutory requirements, for a failure to tailor the APP (WAC 296-800-14005 beginning September 1, 2001). If the written plan provides for recordkeeping but the records are not being kept, a violation of WAC 296-24-020(1)(b) for a failure to enforce the APP should be cited (WAC 296-800-14025 beginning September 1, 2001).

After January 1, 2002, recordkeeping violations should be cited serious if it appears that the failure to keep records has resulted in a failure to address serious hazards. Otherwise, they should be cited general.

*D. How should training violations under the statute be cited?*

A failure to provide appropriate violence prevention training should be cited under WAC 296-24-020(1)(c), with a reference to the statutory requirements (WAC 296-800-14020 beginning September 1, 2001). If the plan either provides for training or does not provide for training but is otherwise adequate, no additional violation should be issued. If the plan does not exist *and* training is not provided, the APP violation and the training violations should be cited separately.

After January 1, 2002, training violations should be cited serious where a related to serious hazard has been documented. Otherwise, they should be cited general.

*E. What if the employer has a plan and/or training but the employer efforts are not adequate to the situation?*

A clearly inadequate plan is a violation of the requirement to appropriately tailor the APP to the workplace and would be cited accordingly. However, a plan that includes the specifically required elements should not be considered inadequate in the absence of prior consultation with WISHA P&TS.

Approved: \_\_\_\_\_

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For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/wisha>).